NEW RULE VII HELP PROGRAM: COPAYMENTS (1) Except as provided in this rule each participant in the HELP Program must pay to the provider of service the copayments as described in ARM 37.85.204, not to exceed the cost of service.

(2) Additional copayments may not be charged if, during the current benefit year the participant has paid in total, three percent of the participant's annual income in copayments.

(3) Copayments may not be charged for:

(a) preventative health care services;

(b) immunizations provided according to a schedule established by the department that reflects guidelines issued by the Centers for Disease Control and Prevention;

(c) medically necessary health screenings ordered by a health care provider;

(d) pregnancy services;

(e) generic pharmaceutical drugs;

(f) eyeglasses purchased by the Medicaid program under a volume purchasing agreement;

(g) EPSDT;

(h) transportation services;

(i) family planning services;

(j) emergency services;

(k) hospice;

(l) independent laboratory and x-ray services; and

(m) tobacco cessation.

(4) Copayments may not be charged for services rendered in circumstances of third party liability (TPL) claims where the HELP Program is the secondary payer under ARM 37.85.407. If a service is not subject to TPL, but is covered by the HELP Program, copayments are applied.

(5) The following categories of persons are exempt from copayments:

(a) American Indian and Alaska Native;

(b) pregnant women;

(c) individuals under age 21;

(d) terminally ill individuals; and

(e) individuals covered under the Breast and Cervical Cancer Treatment Program.

(6) Premiums and copayments combined may not exceed an aggregate limit of five percent of the annual family household income.

(7) Providers may only charge participants for the following services if the participant signs an ABN for the specific service prior to services being provided:

(a) noncovered services;

(b) experimental services;

(c) unproved services;

(d) services performed in an inappropriate setting; and

(e) services that are not medically necessary.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1306, MCA

53-6-1306. ***(Temporary -- effective on occurrence of contingency)*** **Copayments -- exemptions -- report.** (1) A program participant shall make copayments to health care providers for health care services received pursuant to this part.

(2) Except as provided in subsection (3), the department shall adopt a copayment schedule that reflects the maximum copayment amount allowed under federal law. The total amount of copayments collected under this section must be capped at the maximum amount allowed by federal law and regulations.

(3) The department may not require a copayment for:

(a) preventive health care services;

(b) generic pharmaceutical drugs;

(c) immunizations provided according to a schedule established by the department that reflects guidelines issued by the centers for disease control and prevention; or

(d) medically necessary health screenings ordered by a health care provider.

(4) Each health care provider participating in the third-party arrangement shall report the following information annually to the oversight committee on the Montana Health and Economic Livelihood Partnership Act:

(a) the total amount of copayments that the provider was unable to collect from participants; and

(b) the efforts the health care provider made to collect the copayments. *(Terminates June 30, 2019--sec. 28, Ch. 368, L. 2015.)*

2-4-305. Requisites for validity -- authority and statement of reasons. (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.